

In the
**United States Circuit Court
of Appeals**
For the Ninth Circuit

No. 3886

K. HIRATA, *Plaintiff in Error,*

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

PETITION FOR REHEARING

WALTER METZENBAUM

ATTORNEY FOR PLAINTIFF IN ERROR

500-501 PACIFIC BLOCK

SEATTLE, WASHINGTON

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Comes now the plaintiff in error, K. Hirata, and respectfully petitions to grant a re-hearing in the above entitled cause and in support of his petition submits the following reasons:

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In the original brief of the plaintiff in error it was urged as a ground for reversal that the trial court had refused to hear or consider the defendant's motion to suppress certain evidence and re-

fused to hear any evidence in support thereof, and this court in its opinion refused to sustain this contention for the reason that it appeared in the evidence taken on the trial the arresting officers were police officers of the city of Seattle and consequently evidence illegally secured by them was properly admissible. In so ruling, this court seems to overlook the fact that the motion to suppress does not set forth in terms whether the unlawful seizure was made by federal or city officers but merely alleges in general terms that the seizure of the evidence in question was made without the aid of a search warrant. So far as the pleading is concerned it would have been just as fair and far more reasonable to assume that the seizure was made by federal officials or by a combination of city and federal officers, if assumptions were to be indulged in. No motion to make this pleading more definite and certain in this respect was interposed, in fact no opportunity was afforded to amplify this pleading by amendment or by evidence, for the reason that the trial court took the position that the motion was not timely and could not be considered for any purpose. As pointed out in the brief of the plaintiff in error, had opportunity been given, he might have been able to establish conclusively that the unlawful search and seizure was made by city policemen in conjunction

with and under the supervision of federal agents. Because that opportunity was not afforded, either in support of the motion to suppress or in support of the objection to the introduction of the evidence unlawfully seized at the time of trial, an error was committed which was prejudicial to the plaintiff in error and calls for a reversal of this cause.

Respectfully submitted,

WALTER METZENBAUM,
Attorney for Plaintiff in Error.

State of Washington, }
County of King, } ss.

Walter Metzenbaum, being first sworn on oath says: That he is the attorney for the plaintiff in error, K. Hirata, in the above entitled cause, and that the foregoing petition for rehearing is meritorious and is not interposed for the purpose of delay.

WALTER METZENBAUM.

Subscribed and sworn to before me this 14th day of July, 1923.

WILLIAM H. GILMORE,
Notary Public for the State of Wash-
ington, residing at Seattle.

(Notarial Seal.)

